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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,118	12/02/2003	Jeffrey J. Fitzgerald	CDPC-P01-003	4402
28120 7590 10/28/2008 ROPES & GRAY LLP PATENT DOCKETING 39/41 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624				
EXAMINER NGUYEN, PHUONGCHAU BA				
ART UNIT		PAPER NUMBER		
2416				
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10/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/727,118

Applicant(s)

FITZGERALD, JEFFREY J.

Examiner

PHUONGCHAU BA NGUYEN

Art Unit

2416

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/FIRMIN BACKER/
Supervisory Patent Examiner, Art Unit 2416

Continuation of 11, does NOT place the application in condition for allowance because: 1) Applicant argued that Powers does not teach "providing the status of the plurality of communication links to each of the plurality of destination nodes that generated a return message," as recited in claim 1.

-In reply, applicant is directed to figures 2-3 (Powers) and 0018-wherein the central office maintains information on each of virtual channels and virtual paths that are routed through the central office terminal 60, e.g. whether the virtual channel is up, available or down, unavailable, and any alarm that area active at any of the physical components through which the virtual channel passes; also in 0024, 0027-0028 identifier codes thereby indicate what portion of the virtual channel the test path covers. Since the test cell passing through all the interfaces having the identifier codes indicated the tested portion of the virtual channel, which comprising a plurality of nodes, wherein two nodes would constitute a link, thus each node/interface changed identifier code in the cell, and the identifier code is corresponding to "looped back" or passed through a selected portion of the virtual channel to allow a determination as to whether the ATM equipment is functioning properly, thus providing the status of the tested portion of the virtual channel (having plurality of links connected at least 2 nodes).

2) Applicant argued that the identifier code is not a status message (see remarks, 1st and 2nd paragraphs), also, physical alarms do not indicate the status of any other communication link in the "plurality of communication links" recited in claim 1 (see remarks, paragraph 3).

-In reply, applicant is directed to 0018 (Powers) wherein the central office maintains information on each of virtual channels and virtual paths that are routed through the central office terminal 60, e.g. whether the virtual channel is up, available or down, unavailable, and any alarm that area active at any of the physical components through which the virtual channel passes; also in 0024, 0027-0028 identifier codes thereby indicate what portion of the virtual channel the test path covers. The central office terminal injects test cells into the virtual channels IN ORDER TO TEST THEIR STATUS. Thus, the identifier code that was programmed/changed by the node/interface providing the status of that particular node/interface, two of nodes would constitute a tested portion of virtual channel-emphasis added, 0024

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